

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

OPINION AND ORDER

Before the Court is the Report and Recommendation of United States Magistrate Judge Jodi Jayne (Doc. 1044), which recommends that Defendant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 ("Motion") (Doc. 1006) be dismissed as untimely pursuant to the Tenth Circuit's decision in *United States v. Greer*, 881 F.3d 1241 (10th Cir. 2018). Judge Jayne further recommends denying a certificate of appealability and terminating the Court's appointment of counsel.

Defendant concedes that under *Greer*, his Motion is untimely. However, Defendant argues in his objection (Doc. 1046) to the Report and Recommendation that the Court should not rule on his Motion until after the mandate is issued in *Greer*.¹ Defendant further objects to Judge Jayne's recommendations that a certificate of appealability be denied and that appointment of counsel for Defendant be terminated.

The Tenth Circuit has now issued the mandate in *Greer*, requiring dismissal of Defendant's Motion. Furthermore, upon de novo review of the issues, the Court finds no reason to depart from the analysis in the Report and Recommendation. Therefore, Plaintiff's objection (Doc. 1046) is

¹ For the purpose of preserving his objection to *Greer* in the event it is overturned or overruled, Defendant also argues that *Greer* was incorrectly decided.

OVERRULED, and the Report and Recommendation (Doc. 1044) is AFFIRMED and ADOPTED as the Order of the Court. Defendant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (Doc. 1006) is DISMISSED as untimely. A certificate of appealability is DENIED. The appointment of counsel for Defendant in this matter, which the Court authorized in its August 21, 2017 Order (Doc. 1022), is hereby TERMINATED. The Court will enter a separate judgment.

SO ORDERED this 8th day of June, 2018.


TERENCE KERN
United States District Judge